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JUL 12 2004

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In re Application of:
Denise L. Faustman : DECISION ON PETITION TO
Serial No.: 09/913,664 : ENTER APPLICANT'S 37 C.F.R. § 1.132
Filed: August 17, 2001 : DECLARATION AFTER FINAL REJECTION
Attorney Docket No.: DLF-002.1P US :
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This is in response to the petition under 37 C.F.R. § 1.181(a)(1), filed on June 7, 2004, requesting entry of a 37 C.F.R. § 1.132 declaration after final rejection.

BACKGROUND

In response to the final Office Action issued September 24, 2003, Applicant submitted a Notice of Appeal and a response including a declaration of the inventor pursuant to 37 C.F.R. § 1.132 in order to address and dispute the Examiner's interpretation of the primary references relied on in rejecting Applicant's claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103. This declaration was refused entry on the Advisory Action that was issued on May 7, 2004 on the grounds that good and sufficient reasons were not provided why the declaration was not presented earlier.

DISCUSSION

Applicant's state that the declaration was included in the Response to the final Office Action of September 24, 2003 in order to address and dispute the Examiner's interpretation of the primary references raised for the first time.

A review of the application file record reveals that the Examiner in the final Office action disputed the biological effect of the donor tissue pretreatments taught by Oliver et al. for the first time, thus making the biological effects of the procedures taught by Oliver et al. a contested fact between the Office and Applicant. In response to this interpretation of the references adopted by the Examiner in the final Office Action, Applicant conducted a series of experiments to demonstrate that the methods taught and claimed in the Oliver et al. patents could not anticipate or render obvious Applicant's claimed methods. Accordingly, it is concluded that the declaration was deemed necessary in order to provide the Examiner with documented evidence of Applicant's position.

DECISION

The petition is **GRANTED**.

The application will be forwarded to the examiner for further consideration not inconsistent with this decision.

Should there be any questions about this decision, please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile at 703-872-9306.



Bruce Kisliuk
Director, Technology Center 1600